

**Kansas Administrative Regulations
Economic Impact Statement
For the Kansas Division of the Budget**

Kansas Department of Agriculture
Agency

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Agency Contact

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K.A.R. 4-34-1 to K.A.R. 4-34-21
K.A.R. Number(s)

Submit a hard copy of the proposed rule(s) and regulation(s) and any external documents that the proposed rule(s) and regulation(s) would adopt, along with the following to:

Division of the Budget
900 SW Jackson, Room 504-N
Topeka, KS 66612

I. Brief description of the proposed rule(s) and regulation(s).

Due to the passage of SB 263 by the 2018 Kansas Legislature, the Kansas Department of Agriculture is proposing the promulgation of new rules and regulations relating to the creation of the Industrial Hemp Research Program as authorized by the Alternative Crop Research Act, K.S.A. 2018 Supp. 2-3901 *et seq.*

K.A.R. 4-34-1 – This regulation contains terminology and definitions relevant to and used throughout the proposed regulations.

K.A.R. 4-34-2 – This regulation creates a designated certifying agency responsible for certifying industrial hemp seed in Kansas, establishes the responsibilities of such agency, and sets forth requirements relating to certification of seed.

K.A.R. 4-34-3 – This regulation explains the approval processes for individuals seeking to obtain any license to conduct research pursuant to the Industrial Hemp Research Program. The regulation sets out the stages of the approval process at which applicable fees must be paid and specifies the process for completing the required fingerprint-based state and national criminal history record check.

K.A.R. 4-34-4 – This regulation contains the requirements of the research license applications. The regulation identifies information required on each research license application, including listing all individuals required by the application, specifies requirements for each research proposal, establishes application deadlines, and specifies when a research license application can be denied by the department.

K.A.R. 4-34-5 – This regulation establishes requirements for all licenses and contains general requirements for licensees. This regulation specifies that a license must be issued prior to an individual conducting any industrial hemp-related activity pursuant to the Industrial Hemp Research Program and also specifies that licensees must have any required license in their possession when conducting such industrial hemp-related activities. Additionally, the regulation identifies varieties of industrial hemp that can be utilized; authorizes inspections, sample collection and access by the department to a licensee's industrial hemp; permits the agency to release information; and authorizes educational opportunities.

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K.A.R. 4-34-6 – This regulation contains additional license requirements for individuals issued a research grower license, specifies acreage limitations under one license, and requires a primary licensee to have a primary Kansas residence.

K.A.R. 4-34-7 – This regulation contains additional license requirements for individuals issued a research distributor license and requires a primary licensee to have a primary Kansas residence.

K.A.R. 4-34-8 – This regulation contains additional license requirements for individuals issued a research processor license and specifies additional requirements for a licensee utilizing a mobile processing facility.

K.A.R. 4-34-9 – This regulation contains additional license requirements for individuals that are issued a state educational institution license. The regulation requires that state educational institutions authorizing participation in the Industrial Hemp Research Program be responsible for those individuals that are issued licenses. With some exceptions, the regulation authorizes state educational institution licensees to conduct the same activities as licensed research growers, licensed research distributors, and licensed research processors and requires state educational institution licensees to comply with the same licensing requirements as those licensees. The regulation further specifies that no application fees or license fees shall be imposed for state educational institution licenses.

K.A.R. 4-34-10 – This regulation contains license requirements for individuals that are issued an administrative license. The regulation specifies that administrative licenses may be issued to members of the State Advisory Board, employees of the designated certifying agency, and employees of the department that require licensure as a result of their employment responsibilities. The regulation further specifies that no application fees or license fees shall be imposed for administrative licenses.

K.A.R. 4-34-11 – This regulation contains requirements relating to the State Advisory Board. The regulation establishes the requirements for the composition of the board's membership and terms of the board members, enumerates the assigned duties of the board, and clarifies the administrative license requirement for members of the board.

K.A.R. 4-34-12 – This regulation establishes the fees associated with the Industrial Hemp Research Program. The regulation specifies the application fees, license fees, sampling fees, testing fees, and fees for modification of a license.

K.A.R. 4-34-13 – This regulation establishes the requirements for modification of a license previously issued by the department and addresses the procedure for modification of a license in the event of a primary licensee's death.

K.A.R. 4-34-14 – This regulation includes the land-use restrictions for licensees and establishes signage requirements for research areas.

K.A.R. 4-34-15 – This regulation addresses the movement, sale, or transfer of industrial hemp. It sets out that such activities are at the risk of the licensee and must comply with applicable local, state, and federal laws and regulations.

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K.A.R. 4-34-16 – This regulation authorizes licensees to voluntarily withdraw from the Industrial Hemp Research Program. Additionally, the regulation sets forth the process for a licensed research grower to conduct a voluntary partial destruction of their industrial hemp.

K.A.R. 4-34-17 – This regulation contains requirements for licensed research growers prior to harvest, establishes certain harvest requirements, and identifies the information required for the department to issue a harvest certificate.

K.A.R. 4-34-18 – This regulation contains requirements relating to the department’s collection of pre-harvest samples and testing. The regulation states that test results with a delta-9 tetrahydrocannabinol concentration of 0.3% or less will result in the issuance of a passing report of analysis. It also states that test results with a delta-9 tetrahydrocannabinol concentration of 0.3% or higher will result in the issuance of a failing report of analysis. This regulation also sets out that a passing report of analysis is required before a licensee can complete the harvest and requires that, if a failing report of analysis is issued, the primary licensee destroy all plants in the research areas that were sampled unless the primary licensee requests a subsequent sample and re-test.

K.A.R. 4-34-19 – This regulation contains requirements relating to the department’s collection of post-harvest samples and testing. The regulation states that test results with a delta-9 tetrahydrocannabinol concentration of 0.3% or less will result in the issuance of a passing report of analysis. It also states that test results with a delta-9 tetrahydrocannabinol concentration of 0.3% or higher will result in the issuance of a failing report of analysis. This regulation also sets out that a passing report of analysis is required before a licensee can complete the harvest and requires that, if a failing report of analysis is issued, the primary licensee destroy all plants in the research areas that were sampled unless the primary licensee requests a subsequent sample and re-test.

K.A.R. 4-34-20 – This regulation contains the reporting requirements for licensees and requires the following reports to be completed by the established deadlines: the field planting report, the voluntary withdrawal report, the pre-harvest report, the production report, the distribution report, the processing report, and the research report.

K.A.R. 4-34-21 – This regulation details actions and situations that warrant disciplinary action by the department and specifies the penalties for such actions.

II. Statement by the agency if the rule(s) and regulation(s) is mandated by the federal government and a statement if approach chosen to address the policy issue is different from that utilized by agencies of contiguous states or the federal government. *(If the approach is different, then include a statement of why the Kansas rule and regulation proposed is different)*

These proposed rules and regulations are authorized by 7 U.S.C. 5940, the 2014 Farm Bill, which allows state departments of agriculture to implement industrial hemp pilot programs for research purposes. While the 2014 Farm Bill does not explicitly require state departments of agriculture to implement rules and regulations for the administration of an industrial hemp pilot program, the federal law does require that the departments of agriculture of states wishing to implement an industrial hemp pilot program be authorized to promulgate such rules and regulations.

These proposed rules and regulations differ from those of contiguous states for several reasons. Most notably, Colorado’s industrial hemp pilot program differs substantially from the one contemplated for Kansas

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because Colorado has legalized both medicinal and recreational marijuana by state law and allows the commercial sale of industrial hemp. Both medicinal and recreational marijuana remain illegal in Kansas, and the Kansas Industrial Hemp Research Program is research-focused; commercial production is not yet allowed. Thus, Colorado's rules and regulations do not need to contemplate the same administrative testing burdens, restrictions on sale, or law enforcement issues that the Kansas rules and regulations do.

Secondly, these proposed rules and regulations differ from those of other contiguous states because Kansas has taken a broader approach to who is allowed to participate in the department's program than those states have. Kansas will allow individual farmers, as well as the department and state educational institutions, to be licensed to grow industrial hemp for research purposes. By contrast, Nebraska only allows persons affiliated with its state department of agriculture or post-secondary institutions to be licensed growers. Similarly, Oklahoma's pilot program is limited so as to allow postsecondary institutions to either grow industrial hemp for research purposes or to subcontract with individuals or businesses to do so. Missouri allows no more than two non-profit entities to grow, process, and possess industrial hemp or industrial hemp extracts. These differences all necessitate the Kansas rules and regulations being quite extensive and detailed when compared to those of contiguous states. In administering the Industrial Hemp Research Program in Kansas, the department will be required to ensure that numerous individual growers operate in compliance with Kansas law. Doing so will unavoidably entail a significant administrative burden as long as the substance with which those individual growers are dealing occupies a gray area between a research project, an agricultural commodity, and a controlled substance.

III. Agency analysis specifically addressing following:

A. The extent to which the rule(s) and regulation(s) will enhance or restrict business activities and growth;

The proposed rules and regulations will likely have a limited impact on business activities and growth within the state at this time. The authorizing statute is research-focused, and the commercial production of industrial hemp is currently not allowed in Kansas. However, significant long-term enhancement of business activity is possible as an indirect result of these rules and regulations, as a successful research-based pilot program may lead to the eventual legalization of commercial industrial hemp in Kansas. These rules and regulations do allow for the sale and purchase of industrial hemp seeds or plants among licensees, so there is some potential for increased economic activity in that regard. Additionally, industrial hemp requires inputs similar to those required for other crops, so licensees building growing or storage facilities and purchasing fertilizer, pesticide, herbicide, and equipment may account for some increased economic activity. It should be noted, though, that many inputs such as the ones mentioned are not yet authorized or proven to work well for use on industrial hemp. For example, in states that have already implemented pilot programs, farmers have had difficulty keeping weeds out of their fields, and industrial hemp has proven particularly difficult to harvest using traditional means. This uncertainty as to the effectiveness of traditional inputs for use on industrial hemp means that it is difficult to predict how much economic activity may result from the purchase of such inputs. The impact could be moderately significant, or could be negligible, depending on whether licensees are willing to gamble on unproven inputs. The rules and regulations will likely not restrict existing business activities in Kansas in any way.

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B. The economic effect, including a detailed quantification of implementation and compliance costs, on the specific businesses, sectors, public utility ratepayers, individuals, and local governments that would be affected by the proposed rule and regulation and on the state economy as a whole;

The annual fees expected to be levied by the department under the Industrial Hemp Research Program are as follows:

Category	Proposed Fee
Application Fee	\$ 200.00
Research Grower License	\$ 1,000.00
Research Distributor License	\$ 2,000.00
Research Processor License - fiber or grain	\$ 3,000.00
Research Processor License - floral material	\$ 6,000.00
Sampling Fee (per hour)	\$ 45.00
Laboratory Testing Fee	\$ 250.00
License Modification Fee	\$ 750.00

In determining the total implementation and compliance costs expected to be incurred by other governmental agencies, letters of request were sent to the Kansas County and District Attorneys Association, Kansas Peace Officers Association, Kansas Sheriffs Association, Kansas Highway Patrol, Kansas Bureau of Investigation, Johnson County Sheriff's Office Criminalistics' Laboratory, Sedgwick County Forensic Science Center, Kansas Association of Chiefs of Police, Kansas Association of School Boards and the Kansas Association of Counties. Responses were received from the Kansas Bureau of Investigation and the Sedgwick County Forensic Science Center. The Kansas Bureau of Investigation estimated in their reply that their annual costs, in the first year of implementation will be \$255,845 "to build an internal base capacity to perform THC quantitation analysis on a limited number of samples per year", or \$990,200 "if the program expands to the point where the ability to establish probable cause of a criminal violation is dependent on a THC quantitation analysis and the KBI were required to such analyses on all vegetative samples submitted to our laboratory." The Sedgwick County Forensic Science Center responded that they did not believe the regulations would have any economic impact on them.

C. Businesses that would be directly affected by the proposed rule and regulation;

These proposed regulations will likely not have any restrictive effect on existing businesses in Kansas, as the Industrial Hemp Research Program is not commercialized at this time. Businesses that sell agricultural inputs or greenhouse materials or equipment could see some increase in activity as a result of these rules and regulations.

D. Benefits of the proposed rule(s) and regulation(s) compared to the costs;

These proposed regulations have the potential to provide significant long-term economic benefit to the state of Kansas, as a successful pilot program would likely lay the groundwork for

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the introduction of commercial industrial hemp in Kansas. If industrial hemp crops under the pilot program grow well and are shown to have the potential to be profitable, many Kansas farmers may begin growing the crop within the next several years. Those potential benefits are difficult to quantify, but could be significant. As discussed above, the regulations as written also provide the potential for economic benefits to agricultural input providers and to licensees, who will be allowed to sell various aspects of their industrial hemp crop.

The regulations will also, however, impose a significant burden on the department, laboratory testing facilities, and law enforcement, especially while the pilot program is in its infancy. It will likely take the department and law enforcement some time to determine the most efficient ways to administer the department's program. Because of this, it is admittedly likely that the administrative costs of these regulations will outweigh any direct economic benefit in the short-term. However, these regulations are a necessary step in moving toward the commercialization of industrial hemp in Kansas in compliance with federal law and the wishes of the legislature, and the potential economic benefits of commercialization far outweigh short-term administrative costs.

E. Measures taken by the agency to minimize the cost and impact of the proposed rule(s) and regulation(s) on business and economic development within the State of Kansas, local government, and individuals;

These proposed regulations do not present substantial costs or impacts to existing business activity within the state. The vast majority of the costs presented by these proposed regulations will be borne by governmental agencies and by the individuals participating in the program as licensees—business entities are not at this time allowed to hold a license in the name of a corporate entity or partnership. Some people eventually may leave jobs at existing businesses in hopes of making a living growing industrial hemp, but the economic impact of such to overall business activity in Kansas would likely be negligible, particularly short-term when the growth of industrial hemp in Kansas is still research-based. The majority of people wishing to grow industrial hemp will be people who already make their living as farmers and are simply adding industrial hemp to the crops they already grow.

F. An estimate, expressed as a total dollar figure, of the total annual implementation and compliance costs that are reasonably expected to be incurred by or passed along to business, local governments, or members of the public.

\$1,117,000

An estimate, expressed as a total dollar figure, of the total implementation and compliance costs that are reasonably expected to be incurred by or passed along to business, local governments, or members of the public.

\$1,117,000

Do the above total implementation and compliance costs exceed \$3.0 million over any two-year period?

YES ☐ NO ☒

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Give a detailed statement of the data and methodology used in estimating the above cost estimate.

In determining anticipated implementation and compliance costs, letters of request were sent to the Kansas County and District Attorneys Association, Kansas Peace Officers Association, Kansas Sheriffs Association, Kansas Highway Patrol, Kansas Bureau of Investigation, Johnson County Sheriff's Office Criminalistics' Laboratory, Sedgwick County Forensic Science Center, Kansas Association of Chiefs of Police, Kansas Association of School Boards and the Kansas Association of Counties. Responses were received from the Kansas Bureau of Investigation and the Sedgwick County Forensic Science Center. The majority of the implementation and compliance costs associated with these regulations outside of the Kansas Department of Agriculture lie with the Kansas Bureau of Investigation. The Kansas Bureau of Investigation estimates that their costs in the first year of implementation will be \$255,845 "to build an internal base capacity to perform THC quantitation analysis on a limited number of samples per year," or \$990,200 "if the program expands to the point where the ability to establish probable cause of a criminal violation is dependent on a THC quantitation analysis and the KBI were required to such analyses on all vegetative samples submitted to our laboratory." We selected the larger of the two numbers provided in our analysis. The Sedgwick County Forensic Science Center responded that they did not believe the regulations would have any economic impact on them. The estimate of KDA's total implementation and compliance costs upon business, local governments, or members of the public of \$1,117,000 are based on the attached table.

Prior to the submission or resubmission of the proposed rule(s) and regulation(s), did the agency hold a public hearing if the total implementation and compliance costs exceed \$3.0 million over any two-year period to find that the estimated costs have been accurately determined and are necessary for achieving legislative intent? If applicable, document when the public hearing was held, those in attendance, and any pertinent information from the hearing.

YES ☐ NO ☒

- G. If the proposed rule(s) and regulation(s) increases or decreases revenues of cities, counties or school districts, or imposes functions or responsibilities on cities, counties or school districts that will increase expenditures or fiscal liability, describe how the state agency consulted with the League of Kansas Municipalities, Kansas Association of Counties, and/or the Kansas Association of School Boards.**

The proposed regulations will not significantly increase or decrease revenues of cities, counties, or school districts, as most of the costs of the Industrial Hemp Research Program will be borne by the department and the Kansas Bureau of Investigation. Counties and municipalities could see some expenditures as a result of costs to local law enforcement, though most law enforcement costs will be at the state level. Letters of request were sent to the League of Kansas Municipalities, the Kansas Association of School Boards and the Kansas Association of Counties. No responses were received from those entities.

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H. Describe how the agency consulted and solicited information from businesses, associations, local governments, state agencies, or institutions and members of the public that may be affected by the proposed rule(s) and regulation(s).

Letters were sent to the League of Kansas Municipalities, the Kansas Association of Counties, the Kansas Association of School Boards, the Kansas Bureau of Investigation, the Kansas Highway Patrol, the Kansas Sheriff's Association, the Kansas Peace Officers' Association, the Kansas County and District Attorneys' Association, the Kansas Association of Chiefs of Police, the Sedgwick County Regional Forensic Science Center and the Johnson County Sheriff's Office Criminalistics Laboratory inquiring whether the draft regulations will have an economic effect on those organizations. These letters requested a statement of quantified costs associated with implementation and compliance, an estimate of the total annual implementation and compliance costs, a statement of whether implementation and compliance costs will exceed \$3,000,000 over any two-year period, a statement of whether the draft regulations will increase or decrease the organizations' revenue, and a statement of whether the draft regulations will impose functions or responsibilities on the organizations that will increase their fiscal expenditures or fiscal liability. Furthermore, draft regulations were shared with the public via the Kansas Department of Agriculture's website and the public was able to submit comments or concerns to the department.

I. For environmental rule(s) and regulation(s) describe the costs that would likely accrue if the proposed rule(s) and regulation(s) are not adopted, as well as the persons would bear the costs and would be affected by the failure to adopt the rule(s) and regulation(s).

The department does not anticipate any costs accruing if the proposed regulations are not adopted.

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The following table is the department's detailed estimate of total implementation and compliance costs that are reasonably expected to be incurred by or passed along to business, local governments, or members of the public.

Category	Proposed Cost	# Expected	Estimated Total Cost
<i>Implementation and compliance costs of the department</i>			
Application Fee	\$ 200.00	50	\$ 10,000.00
Research Grower License	\$ 1,000.00	30	\$ 30,000.00
Research Distributor License	\$ 2,000.00	10	\$ 20,000.00
Research Processor License – fiber and grain	\$ 3,000.00	3	\$ 9,000.00
Research Processor License - floral material	\$ 6,000.00	7	\$ 42,000.00
Sampling Fee (per hour)	\$ 45.00	40	\$ 1,800.00
Laboratory Testing Fee	\$ 250.00	50	\$ 12,500.00
License Modification Fee	\$ 750.00	2	\$ 1,500.00
<i>Other implementation and compliance costs</i>			
Kansas Bureau of Investigation	\$ 990,200.00	1	\$ 990,200.00 ¹
TOTAL			\$1,117,000.00

¹ This costs represents a scenario if the program expands to the point where the ability to establish probable cause of a criminal violation is dependent on a THC quantitation analysis and the KBI were required to such analyses on all vegetative samples submitted to the KBI laboratory.

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